

TCEQ DOCKET NO. 2009-0290-MWD

Application by
FAR HILLS UTILITY DISTRICT
for a **Temporary Order** to Discharge
Treated Municipal Wastewater in
Montgomery County, Texas

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Before the
**TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S BRIEF REGARDING A TEMPORARY ORDER

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Brief in the matter of the application by Far Hills Utility District (Far Hills or the District) for a Temporary Order to discharge treated municipal wastewater in Montgomery County, Texas.

Background

Far Hills originally submitted an application for a TPDES permit, Permit No. WQ0014555001 (Permit 001) on August 31, 2004, at a location on Cude Cemetery Road with a discharge point on Lake Conroe. Permit 001 was protested and referred to the State Office of Administrative Hearings (SOAH). At the conclusion of the contested case hearing, the SOAH judge recommended denying the application. The Commission considered the Proposal for Decision (PFD) on August 22, 2007, and denied Permit 001 in an Order issued September 7, 2007.

On April 11, 2007, Far Hills filed a new application for a TPDES permit, Permit No. WQ0014555002 (Permit 002), for an identical treatment facility but at a different location on Cude Cemetery Road and with a different discharge point on Lake Conroe. No comments were received on Permit 002. The uncontested permit was posted to the Executive Director's uncontested agenda and granted on November 11, 2007. The facility was built and is currently operating. The facility authorized by Permit 002 serves approximately 372 residential wastewater connections.

Permit 002 is the subject of a Petition to Revoke. The PFD resulting from a contested case hearing on that Petition is scheduled for consideration at the same Commission Agenda as this Application for a Temporary Order. The Judge's recommendation in the PFD is to revoke

Permit 002. Far Hills feels the need for this Temporary Order in the event that TPDES Permit No. WQ0014555002 is revoked.

Provisions of the Draft Temporary Order

The findings of fact, conclusions of law, and ordering provisions of the Draft Temporary Order are set out in the Commission Agenda Backup for this item. The most significant provisions are:

1. Far Hills must comply with all provisions in TPDES Permit No. WQ0014555002 not rendered moot by its revocation.
2. Far Hills must submit monthly status reports of its sampling, as well as the monthly status of its efforts to obtain a new TPDES permit.
3. The Draft Temporary Order has a term of two years from issuance, considered sufficient to obtain a new TPDES permit, and may be renewed only once for a period not to exceed 180 days.
4. Pursuant to Conclusion of Law No. 3 of the Draft Temporary Order, the discharge under the proposed Temporary Order is still a violation of the Texas Water Code.
5. The Executive Director will withhold any enforcement action for discharges from the facility providing those discharges are compliant with terms and conditions of the draft order, including all provisions in TPDES Permit No. WQ0014555002.
6. The Draft Temporary Order does not represent a reinstatement of TPDES Permit No. WQ0014555002 if that permit is revoked.
7. Far Hills is ordered to apply for a new permit for the existing facility within 30 days of the issuance of the Draft Temporary Order.

Findings Required by Law

Certain findings are required by law before the Commission may issue a Temporary Order. TEX. WATER CODE § 5.509.

1. The proposed Order is necessary to enable action to be taken more expeditiously than otherwise provided by Chapter 26 of the Water Code to effectuate the policy and purposes of that chapter. *Id.* § 5.509(a)(1).

2. The discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss. *Id.* §§ 5.509(a)(2)(A)(i) & (ii).

3. There is no feasible alternative to the proposed discharge. *Id.* § 5.509(a)(2)(B). *See also* next section.

4. The discharge will not cause significant hazard to human life and health, unreasonable damage to property, or unreasonable economic loss. *Id.* § 5.509(a)(2)(C).

5. The discharge will not present a significant hazard to the uses that may be made of the receiving water after the discharge. *Id.* § 5.509(a)(2)(D).

Justifications for these findings were submitted by Far Hills in a sworn application for the Draft Temporary Order. The Executive Director has not independently verified their justification. The burden of proof lies with Far Hills.

The District's Options if Permit WQ0014555002 Is Revoked

If Permit 002 is revoked, Far Hills could have the following options:

1. Cease operating the facility authorized by Permit 002 and reconnect with the nearest permitted treatment facility, that of Montgomery County Utility District No. 2 (MCUD2). MCUD2 treated wastewater from the area served by Far Hills from 1972 until 2009 when the Far Hills facility was completed.¹ However, Far Hills alleges that MCUD2 is currently prohibited by agreement with the TCEQ from accepting any offsite waste due to its capacity and its existing high flow volumes. Far Hills has asked MCUD2 if it could again start receiving and treating wastewater from Far Hills, and MCUD2 has responded that it cannot.²

Option #1 is not possible.

2. Cease operating the facility formerly authorized by Permit 002 and pump and haul the District's wastewater to another treatment facility willing and capable of handling the volume. Far Hills estimates that the cost to haul wastewater would be approximately 8¢ per gallon. Far Hills estimates that it processes approximately 2 million gallons of wastewater per month. The cost of pumping and hauling (not including the charge for treatment at another facility) would be around \$160,000 per month, or about \$430 per month per customer.

¹ Far Hills Tr. at 143-44 (from the contested case over revocation).

² Far Hills Ex. 1 at 18.

Option #2 is possible, but costly. It is believed that Far Hills would pass the cost on to its customers.

3. Cease operating the facility formerly authorized by Permit 002 and allow wastewater to back up in its customers' homes. Far Hills suggests this as an option.

The Executive Director does not believe Option #3 is realistic and would not condone such an option.

4. Continue operating the facility formerly authorized by Permit 002 without a permit and with no controls on the quality of the effluent discharged. This option would subject the District to daily fines by the TCEQ.

Option #4 is possible, but costly. It is believed that Far Hills would pass the cost on to its customers. In addition, TCEQ would have no guarantee of the quality of the effluent discharged or means to monitor the quality of the effluent discharged.

5. Continue operating the facility formerly authorized by Permit 002 without a permit but with the Draft Temporary Order applied for here.

Option #5 is possible. With the Draft Temporary Order, TCEQ would receive monthly reports of analytical sampling of the effluent discharged and would have the legal means to enforce the quality of the effluent discharged.

Conclusion

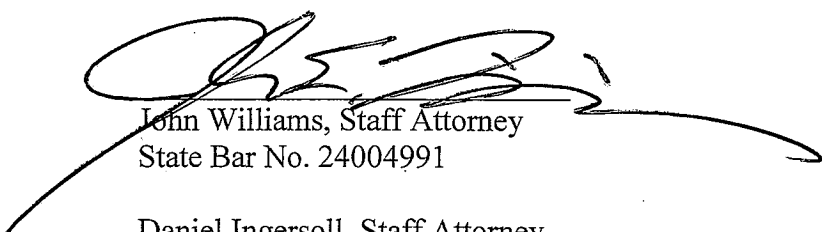
Though none of these options seems ideal, Option #5 with the Draft Temporary Order seems the most reasonable and most cost effective option that still protects the environment. The Executive Director recommends that the Commission either approve the Draft Temporary Order or refer the Draft Temporary Order to SOAH for a contested case hearing. The Executive Director is open to suggestions to improve the Draft Temporary Order to make it more protective.

Respectfully submitted,

Texas Commission on Environmental
Quality

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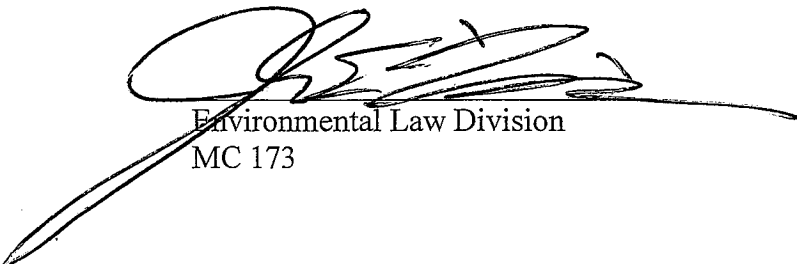
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REPRESENTING THE EXECUTIVE DIRECTOR
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CERTIFICATE OF SERVICE

I certify that on September 3, 2010, the foregoing Executive Director's Brief Regarding a Temporary Order was electronically filed with the Office of the Chief Clerk, seven additional hard copies were filed with the Office of the Chief Clerk, a hard copy was sent by regular mail to the Administrative Law Judge, and electronic copies were sent by e-mail to all other persons on the attached mailing list.



Environmental Law Division
MC 173

EXECUTIVE DIRECTOR'S MAILING LIST

Application by Far Hills Utility District for a Temporary Order
TCEQ Docket No. 2009-0290-MWD

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